NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

American Standard Companies, Inc., American Standard Inc., d/b/a American Standard and Glass, Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO, CLC, and its Local Union No. 7A. Cases 8-CA-33352, 8-CA-33477, 8-CA-33551, 8-CA-33641, 8-CA-34284, 8-CA-34372, and 8-CA-34809

October 22, 2010

## DECISION AND ORDER

## BY CHAIRMAN LIEBMAN AND MEMBERS BECKER AND PEARCE

On May 30, 2008, the two sitting members of the Board issued a Decision and Order in this proceeding, which is reported at 352 NLRB 644 (2008). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the D.C. Circuit, and the General Counsel filed a cross-application for enforcement. On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S.Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a delegee group of at least three members must be maintained. Thereafter, the court of appeals remanded this case for further proceedings consistent with the Supreme Court's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.<sup>2</sup>

The Board has considered the judge's decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order to the extent and for the reasons stated in the decision reported at 352 NLRB 644, which is incorporated herein by reference except as modified below.

Substitute the following two paragraphs for the third full paragraph at page 645.

"We agree with the judge's conclusion that the parties' conduct in the late hours of April 30, and early hours of May 1, 2002, establishes that there was no 'meeting of the minds' on a successor agreement. It is undisputed that there was no written agreement or signed or initialed document of any kind memorializing the alleged agreement between the parties prepared on May 1, contrary to both the parties' prior practice and the common collective-bargaining practice generally. The Union called a brief strike after expiration of the prior agreement and before the parties agreed to extend the prior contract. The parties agreed to continue negotiating over the outstanding noneconomic issues, and the parties in fact did so in the early morning hours of May 1, when the mediator was no longer present. Respondent's corporate vice president, Mo Heshmati, informed employees as they arrived at work the morning of May 1 that negotiations were on-going as no settlement had been reached.

Given these various forms of compelling evidence that neither the Union's nor the Respondent's principals believed an agreement had been reached, the testimony of the mediator and related evidence that the judge refused to receive would not change our conclusion that the Respondent violated Section 8(a)(5) when it refused to continue negotiations in the absence of impasse or agreement on May 1, and its related actions after that time. For that reason, we decline to pass on the Respondent's argument that the judge erred by excluding the evidence."

Dated, Washington, D.C. October 22, 2010

Wilma B. Liebman,	Chairman
Craig Becker,	Member
Mark Gaston Pearce,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the powers of the National Labor Relations Board in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Thereafter, pursuant to this delegation, the two sitting members issued decisions and orders in unfair labor practice and representation cases.

<sup>&</sup>lt;sup>2</sup> Consistent with the Board's general practice in cases remanded from the courts of appeals, and for reasons of administrative economy, the panel includes the members who participated in the original decision. Furthermore, under the Board's standard procedures applicable to all cases assigned to a panel, the Board Members not assigned to the panel had the opportunity to participate in the adjudication of this case at any time up to the issuance of this decision.

<sup>&</sup>lt;sup>3</sup> Fn. 11, id., is incorporated herein in its entirety.